

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DUANE BEATY,

Movant,

-v.-

UNITED STATES OF AMERICA,

Respondent.

Crim No. 1:03-cr-01364-LAK

**REPLY TO MEMORANDUM OF LAW OF THE UNITED STATES OF
AMERICA IN OPPOSITION TO OTIS PARKES'S SECOND MOTION
UNDER 28 U.S.C. § 2255**

COMES Movant, DUANE BEATY ("Beaty"), appearing *pro se*, and files his Reply to Memorandum of Law of the United States of America in Opposition to Otis Parkes's Second Motion under 28 U.S.C. § 2255, and would show as follows:

I. PRELIMINARY STATEMENT

As a preliminary matter, Beaty respectfully requests that this Court be mindful that "[T]he filings of a federal habeas petitioner who is proceeding *pro se* are entitled to the benefit of liberal construction." *Tracy v. Freshwater*, 623 F.3d 90 (2nd Cir. 2010); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Haines v. Kerner*, 404 U.S. 519 (1972) (same).


II. REPLY TO GOVERNMENT'S MEMORANDUM IN OPPOSITION

Beaty has just recently received through the prison mail the government's alleged response to his § 2255 Motion to Vacate. The government had previously sent a Memo Endorsement stating that it would file its response to Beaty's § 2255 Motion to Vacate by January 23, 2023. See ECF No. However, it failed to file a response to the correct defendant. Beaty cannot reply to the Memorandum of Law of the United States of America in Opposition to **Otis Parkes's** Second Motion under 28 U.S.C. § 2255 because it is not filed under the correct defendant in this case. Because the government has failed to timely file its response to Beaty's § 2255 Motion, they have procedurally defaulted and the Court should strike their response and rule on the merits of Beaty's motion.

WHEREFORE, premise considered, the government has procedurally defaulted and his motion should be decided on the merits of his motion.

Respectfully submitted,

Dated: March 20, 2023


DUANE BEATY
REG. NO. 55887-054
USP FLORENCE - HIGH
U.S. PENITENTIARY
P.O. BOX 7000
FLORENCE, CO 81226

III. CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2023, a true and correct copy of the above and foregoing Reply to Memorandum of Law of the United States of America in Opposition to Otis Parkes's Second Motion under 28 U.S.C. § 2255 was sent via First Class U. S. Mail to Danielle M. Kudla, Assistant United States Attorney at U. S. Attorneys Office, for the Southern District of New York, One St. Andrew's Plaza, New York, NY 10007.


DUANE BEATY

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March 20, 2023

Ms. Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals
for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007


RE: *USCA No. 16-1827* *Beaty v. United States of America*
Crim No. 1:03-cr-01364-LAK-2

Dear Ms. Wolfe:

Enclosed please find and accept for filing Reply to Government's Memorandum of Law in Opposition to Otis Parkes Successive Motion to Vacate Pursuant to 28 U.S.C. § 2255 . Please submit this reply to the Court.

Thank you for your assistance in this matter.

Sincerely,


DUANE BEATY
Appearing *Pro Se*

Encl. as noted

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FOR LOAN
HOUSTON, TX
77070
MAR 29, 23
AMOUNT

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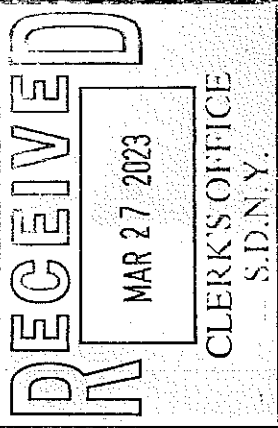
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DUANE BEATY
REG. NO. 55887-054
USP FLORENCE - HIGH
U.S. PENITENTIARY
P.O. BOX 7000
FLORENCE, CO 81226

TO:

Ms. Ruby J. Krajick, Clerk of Court
United States District Court
For the Southern District of New York
500 Pearl Street
New York, New York 10007

QD & At

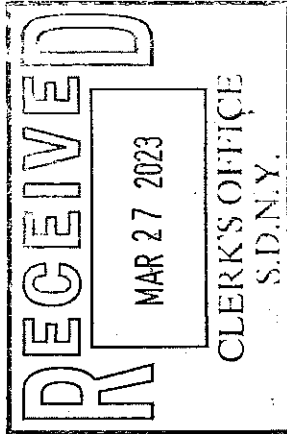
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RDC 99



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TO:

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United States District Court
For the Southern District of New York
500 Pearl Street
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